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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LEE REISWIG et al.,

Plaintiffs and Appellants,

v.

COUNTY OF SAN LUIS OBISPO,

Defendant and Respondent.

2d Civil No. B205667
(Super. Ct. No. CV060245)
(San Luis Obispo County)

Plaintiffs Lee Reiswig and Kelly Case-Horn appeal a judgment in favor of defendant County of San Luis Obispo (County) on their premises liability action for damages involving the death of their daughter. Reiswig and Case-Horn alleged that their daughter's automobile accident was the result of a dangerous road condition which the County created. We conclude that in a bifurcated trial on the issue of whether there was a hazardous road condition (Gov. Code, § 830, subd. (a)), the trial court did not err by instructing the jury on California's basic speed law. (Veh. Code, § 22350.) We affirm.

FACTS

Reiswig and Case-Horn filed a tort action against the County alleging that their daughter, Stefanie Lee Reiswig, died when she was unable to negotiate a curve on Penman Springs Road and her car flipped over. They claimed that there was a dangerous road condition because the County failed to post signs to warn motorists about the curve and the need to slow down. This accident occurred at night on a country road.

The parties stipulated to bifurcate the issues so that the first trial would be limited to one issue-whether there was a dangerous condition on the road where the accident took place.

At trial, Edward Ruzak, a traffic engineer, testified that before approaching the curve where the accident occurred, motorists are driving on a winding gravel road. They then come to an asphalt stretch which appears to be straight. Drivers believing the road is straight would tend to drive faster and not realize that the road curves to the left. They could lose control of the car while attempting to negotiate the turn on the curve.

Ruzak said a "comfortable speed" to negotiate the curve would be 27 miles per hour. He could negotiate that turn at 35 miles per hour, "but it's uncomfortable." He said, "You can't go through there at 45" He opined that there should have been a sign before the curve to warn drivers they were approaching it and to drive no more than 25 miles per hour.

On cross-examination, Ruzak testified that a positive factor about the safety of this road was its accident history. He said, "[T]here were no prior accidents." He said prudent drivers would slow down when they saw the downward slope on the road. When approaching the curve, they would know that they should be careful because they are driving on a country road.

In the defense case, California Highway Patrol Officer Ronald Friberg testified that he had driven that curve at a speed of 45 miles per hour. That speed was the upper limit for his "comfort level" on that curve. The straight paved portion of the road which leads to the curve is two-tenths of a mile in length. Friberg said the basic speed law applies to this area.

Weston Pringle, a traffic engineer, testified that the area where the accident occurred was not dangerous. He said motorists using due care on this road would drive at slower speeds and there was no need for a warning sign before the curve. There were several factors that would alert a reasonable driver about the need to slow down, including the narrowness of the road, the turns on the dirt portion and the "undulations and ups and downs" on the paved portion. He said, "If you're driving respecting the

condition of the roadway, I don't think you need a sign because you're going to be at a speed that's going to allow you to determine a curve is there and safely negotiate it."

The jury found that the road where the accident took place did not constitute a dangerous condition of public property.

The Basic Speed Law Instruction

The County requested the court to give a jury instruction on the basic speed law, California Vehicle Code section 22350. That section provides, "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." (Veh. Code, § 22350.)

Reiswig and Case-Horn objected claiming that the basic speed law was irrelevant. The trial court disagreed. It ruled that in determining whether a dangerous condition exists (Gov. Code, § 830, subd. (a)), "due care" by the driving public is a relevant issue. It said the basic speed law was relevant to that due care issue because it involves a standard that should be followed by prudent drivers.

DISCUSSION

I. The Basic Speed Law Instruction

Reiswig and Case-Horn contend that the trial court erred by instructing the jury on California's basic speed law. They claim the basic speed law is irrelevant to the issue of whether the County created a dangerous road condition and it was reversible error to allow it to be considered in this bifurcated trial. We disagree.

"Jury instructions are sufficient which in composite supply the jury with a well-balanced statement of the necessary legal principles." (*Murrell v. State of California ex rel. Dept. Pub. Wks.* (1975) 47 Cal.App.3d 264, 270.) "Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation." (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 163.) A road condition "is dangerous if it creates a

substantial risk of harm when used *with due care by the public generally . . .*" (*Murrell*, at p. 267, italics added; Gov. Code, § 830, subd. (a).)

Here the trial court instructed jurors that "[a] 'dangerous condition' is a condition of public property that creates a substantial risk of injury to members of the *general public who are using the property* or adjacent property *with reasonable care and in a reasonably foreseeable manner*. A condition that creates only a minor risk of injury is not a dangerous condition." (Italics added.)

The trial court gave an instruction on the duty to provide curve signage. The instruction provided, "A public entity is not responsible for the lack of a curve warning sign and/or speed advisory sign unless a *reasonably careful person* would not notice or anticipate a dangerous condition of property without the curve warning sign and/or speed advisory sign." (Italics added.)

The court also gave a basic speed law instruction based on Vehicle Code section 22350. The instruction provided, "A person must drive at a reasonable speed. Whether a particular speed is reasonable depends on the circumstances such as traffic, weather, visibility, and road conditions. Drivers must not drive so fast that they create a danger to people or property."

The dangerous condition and signage instructions required jurors to consider: 1) whether the curve is safe for the general public who use it "with reasonable care," and 2) what a "reasonably careful person" would anticipate in negotiating the curve. (*Murrell v. State of California ex rel. Dept. Pub. Wks.*, *supra*, 47 Cal.App.3d at p. 270.) The basic speed law is a well-established instruction based on the common sense principle that reasonable people should not drive at speeds that are unsafe for the road conditions. (Veh. Code, § 22350; *Martinez v. O'Blennis* (1960) 177 Cal.App.2d 337, 340-341.) This instruction provided guidance to the jury in deciding whether the curve was safe based on what a "reasonably careful person" would do using "reasonable care." Absent such an instruction, jurors could be confused about the relevant standards involved in interpreting such general language as "reasonable care." (*Murrell*, at p. 269.) Moreover, not giving the instruction could lead jurors to engage in speculation. As the

County notes, without it, some jurors might assume that driving at the highway speed of 55 miles per hour is always appropriate for negotiating curves on narrow, partially paved, two-lane country roads at night.

Appellants claim that the Vehicle Code's careful driving standards must be isolated from the analysis of what constitutes a hazardous condition. But these concepts are often related. "[A]ny property can be dangerous if used in a sufficiently improper manner. For this reason, a public entity is only required to provide roads that are safe for *reasonably foreseeable careful use*." (*Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196, italics added.) The basic speed law is a standard of reasonably foreseeable careful use and its significance is obvious here. "If [] it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not 'dangerous'" (*Ibid.*) The public entity in making decisions about road conditions should be able to "reasonably foresee that motorists using due care would obey the provisions of the Vehicle Code" (*Id.* at p. 1195.) The basic speed law is one of those provisions. Consequently the dangerous road condition issue cannot be isolated from the standard for determining speeds reasonably prudent motorists use. (*Fuller v. State of California* (1975) 51 Cal.App.3d 926, 940 ["a public entity should not be liable for injuries resulting from the use of a highway--safe for use at 65--at 90 miles an hour, even though it may be foreseeable that persons will drive that fast"].) The trial court's instructions were consistent with these principles.

Reiswig and Case-Horn claim that in light of *Johnston v. County of Yolo* (1969) 274 Cal.App.2d 46, it was error to give a basic speed law instruction on the issue of whether a dangerous road condition exists. We disagree. In *Johnston*, the Court of Appeal concluded that the phrasing of an instruction involving the basic speed law was misleading. That instruction provided, in relevant part, "Physical conditions such as width, curvature, grade and surface conditions, or any other condition readily apparent to a driver, in the absence of other factors, *do not require special downward speed zoning*, because *the basic speed law under the instruction which I have already given is sufficient*

regulation as to such conditions." (*Id.* at p. 57, italics added.) In reversing, the Court of Appeal held that this instruction suggested that the basic speed law would obviate the need for a duty to remedy hazardous road conditions.

But that is not the case here because the trial court specifically instructed jurors, "If you determine Penman Springs Road should have been signed by the County . . . California Vehicle Code § 22350 (*the basic speed law*) *does not obviate the necessity for such signing.*" (Italics added.) This instruction provided adequate guidance. No reasonable juror would conclude that the basic speed law immunized the County from its duty to correct dangerous road conditions.

Reiswig and Case-Horn claim that *Alexander v. State of California ex rel. Dept. of Transportation* (1984) 159 Cal.App.3d 890, 899, demonstrates why the court erred by giving the instruction. We disagree. In *Alexander*, a trial court was reversed for granting a judgment notwithstanding the verdict in favor of the public entity. The Court of Appeal noted that the trial judge had apparently considered the plaintiff's negligence in deciding the issue of whether there was a dangerous condition. It had also usurped the jury's fact finding role. The trial judge had erroneously decided as a matter of law that the plaintiff's violation of traffic laws meant there could be no dangerous road condition liability because the plaintiff did not use the road "with due care." (*Ibid.*) The court held, "So long as a plaintiff-user can establish a condition on the property creates a substantial risk to any foreseeable user of the public property who uses it with due care, he has successfully alleged the existence of a dangerous condition *regardless of his personal lack of due care.*" (*Id.* at p. 901, italics added.)

Appellants contend that here the trial court's instructions led jurors to consider "whether the driver in this case followed the basic speed law while driving on the road at issue." We disagree. The trial court gave a special instruction to prevent that result. It provided, "You *must not consider any reference to the conduct of the actual driver in the accident* which is the subject of this lawsuit. The *conduct of the actual driver is not relevant to the narrow issue which you are to determine*: namely, whether or not the roadway in the designated direction was in a dangerous condition" (Italics

added.) This instruction was adequate, and the instructions on signage, dangerous road conditions and the basic speed law all correctly stated the applicable law. The combination of these instructions would not confuse any reasonable juror. Nor would these instructions interfere with the jury's role in deciding any of the necessary factual issues involving dangerous road conditions. Appellants have not shown error.

But even had the court erred, the result would not change. From this record, appellants have not shown there is a reasonable probability of a different result had the court not instructed the jury on the basic speed law. (*Thompson v. County of Los Angeles, supra*, 142 Cal.App.4th at p. 163.) Appellants had "'the burden to establish that the condition is one which creates a hazard to persons who foreseeably would use the property with due care.'" (*Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 239.)

From Ruzak's testimony, jurors could reasonably infer that the safety of the curve was directly related to the relative speeds that drivers use. He said if motorists were travelling at "the comfortable curve speed," they would have no problems negotiating the turn. When asked on direct about the maximum speed limit of the road, Ruzak volunteered, "Fifty-five miles an hour, *but reasonable and prudent depending upon the conditions.*" (Italics added.) In other words, appellants' own expert summarized the underlying principles of the basic speed law in answering the question about the proper speed limit. Officer Friberg also said that the speed law that applied to this area was the basic speed law.

In addition, Ruzak conceded that prudent drivers would slow down after seeing the downward slope of this road and would know they should drive with care because they were on a country road. From this and Pringle's testimony, jurors could reasonably infer that no reasonable driver would believe that this was a high speed area. David Flynn of the public works department, one of appellants' witnesses, testified that "driving at a reasonable and prudent speed, one could negotiate that curve." The jury could reasonably find that the road was not dangerous for a reasonably prudent driver travelling at a reasonable speed. ""[E]ven though it is foreseeable that persons may use

public property without due care, a public entity may not be held liable for failing to take precautions to protect such persons."''' (*Sambrano v. City of San Diego, supra*, 94 Cal.App.4th at p. 239.) Moreover, Ruzak said there was no history of prior accidents. The lack of a prior accident history is a strong factor supporting the County's position on the safety of this road. (*Id.* at p. 234.)

We have reviewed appellants' remaining contentions and conclude they have not shown reversible error.

The judgment is affirmed. Costs on appeal are awarded in favor of respondent.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

Law Office of Daniel J. O'Neill, Daniel J. O'Neill for Plaintiffs and
Appellants.

Hall, Hieatt & Connely, LLP, Jay A. Hieatt, Stephanie A. Bowen for
Defendant and Respondent.